

Ms. PERATIS. My daughter said, "Mom, what's the deal here? You told me that Ruth was first on the Supreme Court." I had to give her a little political lecture.

But the fact that Ruth has now been nominated and apparently will be confirmed is a fulfilling of her destiny and the fulfillment of a dream of a whole generation of women lawyers for whom her gender is not irrelevant. Her gender is central and crucial, and we are all proud. We are proud, and as you can see in a lot of respects, Ruth is humble. She has done her work carefully and with dedication for many years, and I think that will continue. And as a Supreme Court Justice, I believe she will walk humbly and do justice for the rest of her life.

Thank you.

[The prepared statement of Ms. Peratis follows:]

#### PREPARED STATEMENT OF KATHLEEN PERATIS

I am Kathleen Peratis. I am a lawyer in private practice in New York City. I am here as a friend and colleague of Ruth Bader Ginsburg. I am also here as a representative of the thousands of women lawyers, judges and law students and women who aspire to be lawyers, judges and law students who Ruth has inspired and for whom she has served as a role model over the last 25 years.

I met Ruth in 1973 at a national conference of feminist lawyers held in New York City. There were, at that time, no more than several dozen of us in the whole country. I had graduated from law school four years earlier, and in my class of about 150, there had been 6 women.

Although our numbers were few, and although our task, justice for women, was monumental, we knew that our time was nearly come. We knew this for a number of reasons, but chief among them was that we were led by Ruth Bader Ginsburg.

In 1971, Ruth had won a case in the United States Supreme Court, *Reed v. Reed*, in which for the first time in our history, a discriminatory gender classification was declared unconstitutional. When that happened, we had been heartened, inspired and suddenly overcome with the notion that justice was possible.

And so, when I actually met Ruth in 1973, it was like meeting Joan of Arc. She offered me a job a few months later, to succeed her at the ACLU when she became a full time law professor at Columbia Law School. Thus began five of the most exciting and professionally rewarding years of my life, although she was full time at Columbia, she was also full time at the ACLU. I watched her, the foremost women's rights lawyer in the country, implement her constitutional strategy for undoing 200 years (or more, depending upon your perspective), of entrenched gender discrimination. She did it case by case, and she won every one—except the one she knew should never have gone to the Supreme Court in the first place, but was unable to stop. More of that in a moment.

Ruth's overarching principle was equality. Her fundamental commitment was to the proposition that gender classification, even those that purported to be benign, always hurt women and usually hurt men. Her faith was abiding that men were by and large people of good will, and that if the harmfulness of gender classification were rationally and carefully explained to them, they would understand and respond by working with us to undo the injustice, piece by piece.

Her litigation strategy called for identifying gender classifications that embodied stereotypical notions of women which were harmful both to the non-stereotypical woman and also to her spouse. That is the common denominator of *Frontiero*, *Weisenfeld*, *Struck*, *Moritz* and a host of others. *Kahn*, the only one she lost, does not fit that pattern, and she knew it. She never wanted that case to go to the Supreme Court, and tried very hard, albeit unsuccessfully, to stop it. She thought it was a loser, and she was right. It seemed to benefit certain women and hurt none. The invidiousness was too subtle and the Court didn't understand.

As her strategy was unfolding, Ruth became a mentor and a role model for a whole generation of feminist lawyers who, like me, are now women of a certain age. She not only inspired us with her success, she was present on a day to day basis to help us. People were always amazed at how easy it was to get in touch with Ruth. She was almost always by the phone either at Columbia or at home, and she always had time to talk about a problem or issue, to review a brief, and make comments and suggestions, or to meet with groups of women to discuss policy or strategy. She was always very clear that our work had to advance us toward one goal—

equality. Thus, any argument or strategy that required an assumption that women were better than men, or that implied that mere equality was not enough, provoked a steely stare. She would then remind us that the gender classification we endorse today will be precedent for the gender classification that puts us or keeps us in our place tomorrow. Today's pedestal is tomorrow's cage.

Her litigation strategy in the '70's turned out to be a good fit for her later judicial philosophy of the '80's. She insisted then that we attempt to develop the law one step at a time. Present the Court with the next logical step, she urged us, and then the next and then the next. Don't ask them to go too far too fast, or you'll lose what you might have won. She often said "It's not time for that case." We usually followed her advice and when we didn't, we invariably lost.

It's no wonder my colleagues and I, Ruth's acolytes by the score, assumed from quite early on, certainly by the mid 1970's, that Ruth would be the first woman on the Supreme Court. When my first daughter was born in 1977, and I named her after Ruth, I told my daughter that her namesake would be the first woman on the Supreme Court. When Justice O'Connor was appointed, in 1981, I had some explaining to do.

Ruth has not only been role model and colleague, she has been a friend. She has shared my joys with me and allowed me to share some of hers with her. She is generous with her time and affection, and devoted to her family and friends. She is accessible, patient and almost wholly without what is negatively described as ego. She is, in short, at least off the bench, thoroughly non-judgmental.

As I know her, Ruth is an overpowering intellect and a dear and compassionate friend. Because of these qualities of mind and spirit, my belief is that as a Supreme Court Justice, she will, as she has for her entire professional life, walk humbly and pursue justice.

The CHAIRMAN. Thank you very much. Well said.

Senator HATCH. Thank you very much for appearing.

The CHAIRMAN. Senator Feinstein, do you have any questions?

Senator FEINSTEIN. I have no question.

You are free to go. Thank you very much.

Senator HATCH. Senator Cohen?

The CHAIRMAN. I beg your pardon. I'm sorry. Senator Cohen?

Senator COHEN. No questions.

The CHAIRMAN. Thank you all very much.

Now we will go back to our fourth panel. Our next panel is comprised of representatives of a number of groups wishing to testify in opposition to the nomination of Judge Ginsburg.

The first is Paige Comstock Cunningham, who is president of the Americans United for Life, in Chicago, IL. Next is Rosa Cumare, a partner in the firm of Hamilton & Cumare, Pasadena, CA. We also have with us Nellie Gray, who is the president of the March for Life Education and Defense Fund, and has been a welcome testifier at a number of hearings. This is not her first time to testify at this and other hearings, and we welcome her.

Susan Hirschmann, executive director of the Eagle Forum, in Washington, DC. Also on this panel is Kay Coles James, vice president of the Family Research Council, but I understand she is in the hearing in the Labor Committee at this time. And last, but certainly not least, is Howard Phillips, chairman of the Conservative Caucus, who is testifying on behalf of the U.S. Taxpayers Party, is that correct, Howard?

Mr. PHILLIPS. On behalf of both organizations.

The CHAIRMAN. On behalf of both organizations.

I welcome you all, and I would invite your testimony in the order in which you have been recognized.

Ms. Cunningham, welcome.

PANEL CONSISTING OF PAIGE COMSTOCK CUNNINGHAM, PRESIDENT, AMERICANS UNITED FOR LIFE, CHICAGO, IL; ROSA CUMARE, HAMILTON & CUMARE, PASADENA, CA; NEL- LIE J. GRAY, PRESIDENT, MARCH FOR LIFE EDUCATION AND DEFENSE FUND, WASHINGTON, DC; SUSAN HIRSCHMANN, EXECUTIVE DIRECTOR, EAGLE FORUM, WASHINGTON, DC; KAY COLES JAMES, VICE PRESIDENT, FAMILY RESEARCH COUNCIL, WASHINGTON, DC; AND HOWARD PHILLIPS, CHAIRMAN, THE CONSERVATIVE CAUCUS, VIENNA, VA

#### STATEMENT OF PAIGE COMSTOCK CUNNINGHAM

Ms. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Chairman and members of the Judiciary Committee, I thank you for this opportunity to testify on the nomination of Ruth Bader Ginsburg to the U.S. Supreme Court.

I am an attorney, a graduate of Northwestern University School of Law. I am a wife and I am a proud mother of three children. I think all those things bear on the testimony that I am giving today, because it is likely that I have reaped in my own career from the seeds that were sown by Judge Ginsburg in her efforts to abolish sex discrimination.

As you mentioned, I am also the president of Americans United for Life, which is the legal arm for the pro-life movement, and we are the oldest national pro-life organization in this country. We are nonpartisan and we are secular, and we are committed to the protection of the vulnerable and the innocent human life from conception to natural death.

Although Judge Ginsburg may possess the credentials to sit on the Supreme Court, we are concerned about the process by which she was nominated and her views on abortion, and appreciate this opportunity to fully educate the Nation, and that is what I appreciate about this process of a thorough look and an opportunity to speak.

I am troubled because, in the first time in our history, a Supreme Court nominee has been required to pass a test, an abortion litmus test. President Clinton made this very clear before he nominated Judge Ginsburg to the High Court. This is a litmus test which prior nominees were wrongly accused of passing, and why one of them was defeated.

I think it is a tragedy that supporting an act which ends the life of one being and scars the future of another should be considered the supreme test for the Supreme Court. And just as disturbing as this unprecedented litmus test is Judge Ginsburg's attempt to justify the decision in *Roe v. Wade* on the ground that abortion is somehow necessary for women's equality, that women cannot be equal in the law or in society, without abortion, through all 9 months of pregnancy for any reason.

Outside of abortion, *Roe v. Wade* has done absolutely nothing to advance women's rights. State and Federal courts have handed down dozens of decisions striking down various forms of sex discrimination, and few, if any, of these courts, including the Supreme Court, have relied on or even mentioned *Roe*.

The real advances in women's rights have come not through the court cases, but through laws enacted by Congress and by State

legislatures. These are the laws that have banned sex discrimination in public and private employment, in the sale and rental of housing, in education, laws that mandate equal pay for equal work, to name just a few. Do you know what? Not one of those laws depends on abortion.

Judge Ginsburg has repeatedly stated that abortion is protected by the equal protection clause of the Constitution or that that ought to have been the basis, rather than the due process clause. But she has gone farther than the Court and suggested in her writings that there ought to be a public policy supporting taxpayer funded abortions.

Her writings also reveal that she would oppose laws protecting women in crisis pregnancies, laws upheld by the Supreme Court just a few months ago, last year, laws such as a woman's right to know, a 24-hour reflection period to think about information about a decision that she cannot change and that she will live with for the rest of her life, laws involving parents. These laws received overwhelming public support. After all, they are reasonable laws.

Judge Ginsburg has testified before you that abortion is central to a woman's dignity. But what is this legacy of *Roe*? Has a generation of abortion on demand solved any of the problems for which it was offered? Has abortion reduced the rates of child abuse or illegitimacy or teen pregnancy or the feminization of poverty? Has it enhanced respect for women? After 20 years of abortion on demand, abortion has flunked the test as the miracle cure for the social problems it promised to solve.

The only obvious benefit of legalized abortion is the economic one. A \$300 abortion is much cheaper than a \$3,000 delivery of a baby. But what about the cost to women's bodies and women's lives? Thousands of women now bear the scars of perforated uteruses, lost fertility and higher breast cancer risks. Close to 70 percent of all relationships end in the first year after an abortion. Many women are abandoned by the baby's father as soon as the crisis of pregnancy is solved by abortion.

Some women say they can't even pass a playground or turn on a vacuum cleaner, because it sounds like a suction machine. All too often, they fall into a pattern of self-abuse, that abuse which mirrors their abuse by others. The destruction and tragedy caused by 28 million abortions is a gaping national wound, a wound whose ugliness is covered up by polite tolerance and rhetoric about a woman's right to choose and keeping government out of private choices.

And make no mistake about it, coercion to have abortions is real. The coercion may be possible precisely because abortion is legal. That is the unspoken price for progress in our careers. Female medical residents, in an article in the *New England Journal of Medicine*, reported that tragedy. We attorneys have discovered that same price. And why not? Because if a woman demands that complete autonomy in her abortion decision, it only seems fair that she bear complete responsibility for the consequences of that, and women once again are left alone to pay the price.

Our radical abortion policy, which Judge Ginsburg apparently supports wholeheartedly, would not expand or advance women's issues. I believe it has actually set the clock back on women's dig-

nity, including the dignity of motherhood. Children should be a shared responsibility. Our educational goals and professional dreams should not depend on an elective surgery that creates second-class citizens out of the voiceless.

Abortion goes against the core values of feminism, equality, care, nurturing, compassion and nonviolence. If we women, who have so recently gained electoral and political voice, do not stand up for the voiceless and the politically powerless, who will? Those who promote abortion rights do not represent the women of America. The 1.8 million members of the National Women's Coalition for Life prove that you can be pro-woman and pro-life. Our feminist pioneers, including Susan B. Anthony and Elizabeth Cady Stanton, cited with approval by Judge Ginsburg, were strongly against abortion and recognized it as child murder and a crying evil.

Judge Ginsburg wrote that the greatest judges "have been independent thinking individuals, with open, but not empty minds, individuals willing to listen and to learn." Unless there is convincing evidence that Judge Ginsburg is willing to reexamine her premises about abortion, which she has so recently stated, then we cannot withdraw our objection to her confirmation.

We ask the committee to seriously consider this statement and our more extensive written testimony. The future of women, men and generations of many yet unborn depend on it.

Thank you.

[The prepared statement of Ms. Cunningham follows:]